



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-679

Appeal M_9500459

Corporation of the City of London



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NATURE OF THE APPEAL:

The appellant brought a civil action against the City of London (the City) and two other parties for damages resulting from a slip and fall accident. He attended an examination for discovery in connection with the action. Subsequently, he submitted a request to the City under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the proceedings at the discovery, and information about the creation of a bicycle path in the area where the slip and fall accident occurred.

In response to the request, the City quoted a fee for the transcript. The fee included a charge for photocopying 89 pages at 20 cents per page, plus levies for the Goods and Services Tax (GST) and provincial sales tax (PST), for a total charge of \$20.47. A charge of \$30 was also levied for preparing the record for disclosure. The total fee in connection with the transcript was \$50.47. In addition, the City provided access to information in its possession about the bicycle path.

The appellant filed an appeal of the fee charged in connection with the transcript. In his appeal letter, the appellant objected to the amount of the fee charged, and commented that the defendants in the action (which include the City) should provide him, the plaintiff, with a free copy of the transcript.

A Notice of Inquiry was sent to the City and the appellant. Because the records appeared to contain the appellant's personal information, for which fees may not be levied under the Act, the Notice of Inquiry raised this as an issue. In response to the Notice of Inquiry, representations were received from both parties.

The issues in this appeal are whether the City is entitled to charge the appellant for the transcript, and if so, whether the fees are in accordance with the applicable sections of the Act, and of R.R.O. 1990, Reg. 823 (the Regulation).

DISCUSSION:

FEES AND PERSONAL INFORMATION

Section 45(1) sets out the types of fees which may be charged for access to records under the Act. Section 45(2) creates an exception to the Act's fee provisions. It states as follows:

Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

The City has provided me with a copy of the transcript of the testimony given by the appellant at the discovery. The City concedes that it contains the appellant's personal information. I have reviewed the record and I concur with this view. In Order M-514, I found that the proper approach for determining whether fees could be charged for personal information was a record-by-record analysis; in other words, if a record contains an individual's personal information, section 45(2) should be interpreted to mean that no fees can be charged to that individual for access to that record.

This would appear to dispose of the matter. However, the City has raised a number of arguments concerning this issue in its representations. In introducing these arguments, the City states:

While the City concedes that there does not appear to be any mechanism in the statute that would enable it to charge a fee for providing what is clearly personal information, at the same time there are a number of related issues that we would argue should be assessed in a determination of this appeal.

The City's arguments focus on the issue of fairness to the court reporting service which prepared the transcript. In this regard, the City refers to Rule 34.17(3) of the Rules of Civil Procedure, which provides that a transcript of a discovery proceeding shall be sent "... to each party who has ordered and paid for a transcript". The City states that fee rates for transcripts of this kind are prescribed in Ontario Regulation 587/91 made under the Administration of Justice Act (the AJA).

The City then suggests that the transcript is a record "of" the court, without explaining the precise relationship between this concept and the charging of fees under the Act. Previous orders of the Commissioner's office have indicated that certain "court records" may fall outside the scope of the Act because they are not in the custody or under the control of an institution under the Act. (see Order P-994). However, in this case, it is clear that the record is in the custody of the City, and this argument does not apply.

The City also argues that both legislation and "practices" exist to regulate the creation and sale of this type of transcript. This argument appears to relate to section 45(1) of the Act, which establishes fees to be charged in connection with access requests "**if no provision is made for a charge or fee under any other Act ...**" (emphasis added). In this case, the regulation under the AJA, referred to above, does specify fees for transcripts. However, in my view, those fees relate to obtaining the transcript **directly from the court reporter**, and they do not apply to requests for transcripts in the possession of institutions under the Act, such as the City.

The City also makes reference to the federal Copyright Act, but does not make any specific representations in that regard. In my view, this issue was disposed of in Order M-29, where Commissioner Tom Wright found that:

... providing **access** to information under the Municipal Freedom of Information and Protection of Privacy Act does not constitute an infringement of copyright. Specifically, sections 27(2)(i) and (j) of the Copyright Act provide that disclosure of information pursuant to the federal Access to Information Act or any like Act of the legislature of a province does not constitute an infringement of copyright.

I agree with Commissioner Wright, and I find that disclosure of the transcript would not constitute an infringement of copyright.

Accordingly, I am not satisfied that the arguments raised by the City are sufficient to permit the City to charge a fee for access to a copy of the record at issue. The record contains the appellant's personal information, and I find that the City is precluded from charging the appellant any fees for access to this record, because of the provisions of section 45(2) which I have reproduced above.

ORDER:

I order the City to provide a copy of the discovery transcript to the appellant, without charging a fee, within twenty-one (21) days after the date of this order, and within that same time period, to send a copy of its covering letter in that regard to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
John Higgins
Inquiry Officer

December 28, 1995

POSTSCRIPT:

I note that, in its decision, the City sought to charge PST and GST in connection with the fee for photocopies levied by the City under the Act. Although I did not have to address this issue in order to decide this appeal, I would like to remind the City of the following finding made by former Inquiry Officer Asfaw Seife in Order M-236: "[i]t should also be noted that neither the Provincial Sales Tax (PST) nor the Goods and Services Tax (GST) should be added to the fees under the Act". The City should bear this in mind when assessing fees under the Act.